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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,903	02/08/2002	Younglok Kim	I-2-176.2US	3606
24374	7590	11/14/2005	EXAMINER	
VOLPE AND KOENIG, P.C. DEPT. ICC UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			HOANG, THAI D	
			ART UNIT	PAPER NUMBER
			2668	

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,903

Applicant(s)

KIM ET AL.

Examiner

Thai D. Hoang

Art Unit

2668

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Application filed on 02/08/2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/18/05, 10/20/03</u> . | 6) <input checked="" type="checkbox"/> Other: <u>IDS 09/30/02, 02/08/02</u> . |

DETAILED ACTION

Double Patenting

(a) A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 5-12 and 15-18 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-8 and 9-12 of copending Application No. 10/077076 respectively. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

(b) The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29

USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

(i) Claims 1-18 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-18 of copending Application No. 10/071917. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

The limitations recited in claims 1-18 are the same limitations recited in claims 1-18 of copending Application No. 10/071917 respectively, but they have different preambles.

(ii) Claims 1-18 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-18 of copending Application No. 10/079107. This is a

provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

The limitations recited in claims 1-18 are the same limitations recited in claims 1-18, respectively, of copending Application No. 10/079107, but they have different preambles.

(iii) Claims 5-12 and 15-18 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-12 of copending Application No. 10/077565. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

The limitations recited in claims 5-12 and 15-18 are the same limitations recited in claims 1-12, respectively, of copending Application No. 10/077565, but they have different preambles.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other

copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Drawings

The drawings are objected to because elements in figures 2 and 5 do not have descriptive legends. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 1, 5, 9 and 13 are objected to because of the following informalities:

The statements "said first and second data fields" (claim 5, line 6), "said first data field" (claim 5, line 7), and "said first and second spread data fields" (claim 6, line 2)

found no basic. Previous paragraphs did not define what first data field is. Therefore, the word, "said" in these claims is grammatically incorrect.

The statement "encoding said first data field producing a second data field having complex conjugates of the symbols of said data field" recited in claim 1, lines 4-5, and claim 9, lines 4-5, should be changed to-- encoding said first data field producing a second data field having complex conjugates of the symbols of said first data field—

The statement "generating a data field" recited in claim 13, line 3 should be changed to -- generating a first data field.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-18 are rejected under 35 U.S.C. 102(e) as being unpatentable by Dabak et al, US Patent No. 6,775,260 B1, hereinafter referred to as Dabak.

Regarding claims 1, 5, 9, 13, 15 and 17, Dabak discloses a system called "Space time block coded transmit antenna diversity for WCDMA". Dabak teaches the system, see figs. 1-2 and col. 4, lines 9-52, comprising:

Receiving generated data symbol S from input data 106 (generating a first data field of symbols);

The space time transmit diversity (STTD) encoder 110 encodes symbols S having complex conjugate S^* (encoding said first data field producing a second data field having complex conjugates of the symbols of said data field)

The S and S^* data symbols are inherently spread by using a different channelization code, since the Dabak's system is a CDMA system, wherein the S data code is associated with ANT1 112, and wherein S^* data code is associated with ANT2 114 (spreading said first and second data fields, wherein said first data field is spread using a first channelization code and said second data field is spread using a second channelization code, each channelization code being uniquely associated with one of a first and second antennas).

The S and S^* data symbols are transmitted by RF signals over antenna ANT1 112 and ANT2 114 respectively (transmitting an RF signal including said first and second spread data fields over a first and second antenna).

Regarding claims 2, 6, 10, 14, 16 and 18 Dabak discloses the system perform the step of scrambling the S and S^* by a scrambling code C^K (208, 220, 214) for S and S^* data symbols. See figs. 1-2, col. 4, lines 33-40 (further comprising the step of scrambling said first and second spread data fields by a scrambling code associated with said base station).

Regarding 3, 7 and 11, Dabak discloses that the data symbol S comprises a sub-data S_1 and a sub-data S_2 . See figure 1 (wherein the symbols of said first data field of symbols are grouped into a first and second sub-data field).

Regarding claims 4, 8 and 12, Dabak discloses the STTD encoder 110 encodes the sub-data S_1 and its complex conjugate S_1^* and the sub-data S_2 and its negative complex conjugate $-S_2^*$. See figure 1 (wherein the symbols of said second data field of symbols are grouped into a third and fourth sub-data field, wherein said third sub-data field is the negative complex conjugate of said second sub-data field and said fourth sub-data field is the complex conjugate of said first sub-data field).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited to further show the state of the art with respect to the application:

US Patent Application Publication No. 2003/0021352 A1, Benning et al, "Space time spreading and phase sweep transmit diversity."


US Patent Application Publication No. 2003/0067993 A1, Viswanathan, "Open-loop diversity technique for systems employing multi-transmitter antennas."

US Patent Application Publication No. 2002/0090038 A1, Dabak et al, "Space time block coded transmit antenna diversity for WCDMA."

US Patent Application Publication No. 2002/0181430 A1, Thomas et al, "Space-time transmit diversity scheme for time-dispersive propagation media."

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thai Hoang


CHIEH M. FAN
PRIMARY EXAMINER